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09/939,917	08/27/2001	Alex Mashinsky	5106-2	4061
7590 04/14/2009 ARBINET-THEEXCHANGE, INC. 120 ALANY STREET TOWER II, SUITE 450 NEW BRUNSWICK, NJ 08901			EXAMINER HAMILTON, LALITA M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/939,917
Filing Date: August 27, 2001
Appellant(s): MASHINSKY ET AL.

Alfred W. Froebrich
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 29, 2008 appealing from the Office action mailed February 26, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,598,029	Johnson	7-2003
5,873,251	Iino	2-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8 and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (6,598,029) in view of Iino (5,873,251).

Johnson discloses a method and corresponding system for bidding on energy supply comprising continuously collecting by a control node bids and asks from buyers and sellers of electric power, dynamically matching by the control node the collected bids and asks to form matches, and configuring an electric network to route electric power in response to the control node in accordance with the matches generated (col.6, lines 5-65 and col. 12, lines 5-40); receiving by the control node information related to current supply and demand conditions on an electric network through a feedback loop (col.6, lines 25-40; col.12, lines 24-28; and col.16, line 65 to col.17, line 5--provider

receives information on supply and demand and feedback reports based on usage); generating, by the control node, a route plan for routing electricity between the matched buyer and seller while matching loads and resources of the electronic network based on the supply and demand information (col.6, lines 43-50 and col. 12, lines 18-24-- moderator sorts bid information among delivery destinations); a high voltage direct current system (col.12, lines 8-20); control node configured to receive bids and asks in a spot market, and to dynamically match the bids and asks using the current supply and demand conditions received through the feedback loop (col.3, lines 44-48); control node is configured to dynamically generate the route plan (col.3, line 53 to col.4, line 16); switching the flow of electric power in the electric network (col.6, lines 5-65 and col. 12, lines 5-40); dynamically effecting the matches generated (col.6, lines 5-65 and col.12, lines 5-40); collecting the bids and asks in a spot market (col.23, lines 25-58); collecting the bids and asks via a wide area network (col.2, lines 45-52); inputting the bids and asks to the wide area network via respective buyer terminals and seller terminals (col.2, lines 45-50); configuring an electric network comprising a high voltage direct current system (col.6, lines 5-65 and col.12, lines 5-40); receiving current supply and demand conditions on the electric network via a feedback loop and using the current supply and demand for dynamically matching bids and asks (col.6, lines 5-65 and col.12, lines 5-40); current supply and demand generating a route plan for each of the matches using the conditions (col.6, lines 5-65 and col.12, lines 5-40); continuously updating the matches based on changes in the bids and asks (col.13, line 65 to col.14, line 15); continuously updating the matches based on changes in the bids and asks (col.13, line

65 to col.14, line 15); matching an equal share of the power from a seller with the lowest asking price to all bids of buyers to which power is available (col.6, lines 5-65 and col.12, lines 5-40); matching a share of the power from a seller with the lowest asking price to all bids of buyers to which the power is available, wherein the share is proportional to the amount of power demanded by the buyer (col.6, lines 5-65 and col.12, lines 5-40); matching the ask of the power from a seller with the lowest asking price first to the bids of buyers with the highest amount of power demanded (col.6, lines 5-65 and col.12, lines 5-40); trading and supplying electric power, a control node for continuously receiving bids and asks from buyers and sellers, matching the received bids and asks to form matched bids and asks and continuously and dynamically updating the matched bids and asks in accordance with changes occurring in the bids and asks, said control node being connectable to an electric network capable of routing electric power between buyers and sellers and for activating switching devices connected to said electric network for switching a flow of power in the electric network to effect the matching of the bids and asks (col.6, lines 5-65 and col. 12, lines 5-40); control node comprises a deal maker module for matching said bids and asks and a route planner module for planning a route (col.6, lines 5-65 and col.12, lines 5-40); control node comprises an accounting module connectable for determining the actual use of the buyer and determining the charge to the buyer (col.7, lines 14-40). Johnson does not specifically disclose simultaneously balancing loads and resources of the electric network based on the supply and demand conditions received through the feedback loop. lino teaches a method and corresponding system for energy plant

operation and control comprising simultaneously balancing loads and resources of the electric network based on the supply and demand conditions (col.13, lines 10-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Johnson within lino for the motivation of further ensuring that the loads are balanced to prevent shortfalls and other problems based on a lack of balance.

(10) Response to Argument

The Appellant argues that neither Johnson nor lino discloses or teaches a control node that receives the bids and asks, matches the bids and asks, and generates a route plan for delivering electricity between matched buyers and sellers or a moderator, which receives the bids and asks also generates a route plan to deliver electricity. In response, Johnson discloses the following:

The Moderator collects this bid information from all the Providers, sorts it according to the rules of the auction (e.g., **sorting it among delivery destinations--such as the grid interfaces of local electric distribution companies serving end users**), and may further process this bid information, for example, to select Providers for particular end users or resellers. This provider selection information may include, for example, a prioritization of the Provider selection in accordance with Providers' bids or the designation of a selected Provider or a default Provider. The Moderator then transmits selected portions of this information to a control computer associated with each end user or group of end users (or each reseller or group of resellers), as well as to participating Providers' energy network management centers. Each control computer gets the rate information and/or provider selection information from the Moderator that pertains to the end user or group of end users (or the reseller or group of resellers) with whom the control computer is associated. The Moderator gives each Provider bid information from

other Providers for at least a portion of the end users (or resellers) in regard to which any Provider has submitted a bid. (col.6, lines 43-64).

A control computer may be operated by the Moderator, by an end user or reseller associated with a control computer (e.g., by the energy manager of a large industrial customer), or by the local energy distribution company that distributes energy to the end user associated with a control computer. For some end users, the Moderator will perform the functions of the control computer, perhaps using an adjunct computer to the Moderator. (col.6, line 65 to col.7, line 5).

From the list of all Providers providing bid information to the Moderator, each control computer (or the Moderator) can select those Providers from whom participating end users or resellers will be provided electric power or natural gas and can change that selection at any time. After each new bid is submitted by a Provider and is processed by the Moderator, the rate and/or provider selection data will be transmitted to the relevant control computers (or retained by the Moderator if the Moderator will perform the functions of the control computer, including selecting a Provider for each set of end users or resellers) and rate information will be distributed to some or all of the Providers in order to implement the auction. A Provider, for example, may not be interested in receiving the bids of other Providers who are not active in the same geographic regions. All Providers will have the opportunity thereafter to submit a lower or higher bid for any end user (or any reseller or group of resellers) or group of end users to whom they wish to supply electric power or natural gas. (col.7, lines 5-22).

Johnson discloses an auction service that will stimulate competition (col.6, lines 1-8), in which bids and asks are received and matched. A control computer, which may be operated by a moderator (control node), receives bid information and selects the matches (col.6, line 65 to col.7, line 24). The controller (moderator) is responsible for scheduling the delivery that takes into account the supply and demand conditions,

depending on capacity utilization or other energy availability factors (col.3, line 53 to col.4, line 16 and col.7, line 24 to col.8, line 10). lino teaches simultaneously balancing loads and resources of the electric network based on the supply and demand conditions (col.13, lines 10-25). Therefore, the Examiner found it to have been obvious to one having ordinary skill in the art at the time the invention was made to combine the references for the motivation of ensuring that the loads are balanced to prevent shortfalls and other problems based on a lack of balance.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Lalita M Hamilton/

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